Filed 10/1/02 In re Alissa D. CA5

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

In re ALISSA D. et al., Persons Coming Under the Juvenile Court Law.	
KERN COUNTY DEPARTMENT OF HUMAN SERVICES, Plaintiff and Respondent, v. ROBERT D., Defendant and Appellant.	F040577 (Super. Ct. Nos. JD91419, JD91420) **O P I N I O N**

THE COURT*

APPEAL from a judgment of the Superior Court of Kern County. Michael G. Bush, Judge.

Sherleen Redd, under appointment by the Court of Appeal, for Defendant and Appellant.

B.C. Barmann, Sr., County Counsel, and Mark L. Nations, Deputy County Counsel, for Plaintiff and Respondent.

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* Before Dibiaso, Acting P.J., Buckley, J., and Gomes, J.

Robert D. appeals from a juvenile dependency court order denying his petition (Welf. & Inst. Code, § 388) seeking placement of his granddaughters, Alissa D. (born in February 1999) and Stephanie D. (born in December 1999).[1] Appellant's appointed appellate counsel submitted a letter dated July 18, 2002, summarizing the facts of the case and advising that no brief would be forthcoming (*In re Sade C.* (1996) 13 Cal.4th 952). By order dated July 23, 2002, we extended appellant 30 days within which to personally file a brief. After the order's deadline, appellant faxed a one-page document to this court. In turn, respondent Kern County Department of Human Services (the Department) has filed its brief with this court. On review, we will affirm.

FACTUAL AND PROCEDURAL HISTORY

Appellant's granddaughters have been adjudged dependent children of the Kern County Superior Court since July 2000, due in large part to their parents' drug abuse. From the outset, the Department placed the girls with their paternal great grandparents. Neither parent was able to subsequently reunify with the children. As of February 2001 when the juvenile court terminated reunification efforts, the great grandparents who were in their 70's made clear their unwillingness to adopt as well as their inability to care for the children on a long-term basis.

At a section 366.26 hearing conducted in June 2001 to select and implement a permanent plan for Alissa and Stephanie, the court identified adoption as the permanent placement goal but stopped short of terminating parental rights. Instead, the court continued the matter 180 days for the Department to locate prospective adoptive parents.

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[1] All statutory references are to the Welfare and Institutions Code unless otherwise indicated.

A parent may petition a juvenile court to modify an existing order on grounds of change of circumstance or new evidence. (§ 388.) The parent, however, must also show that the proposed change would promote the best interests of the child. (§ 388; Cal. Rules of Court, rule 1432(c).)

In late June, appellant asked the Department to place the children with him. At that time, however, he was living in a rented room. The following month the Department located an adoptive placement for Alissa and Stephanie and accordingly placed the children.

Appellant continued to express an interest in placement and in October 2001 obtained his own residence. By that time, however, the children had been in their prospective adoptive placement for three months and appeared to be adapting.

In December 2001, appellant filed a petition (§ 388) asking the court to modify the girls' placement from the prospective adoptive parents' home to his. As changed circumstances or new evidence, he alleged in general terms that a former social worker on the case did not state all facts truthfully and he had been misinformed as to eligibility to adopt his granddaughters. He also mentioned that another social worker made a home visit to his new residence and found it to be suitable. Appellant further claimed a change of placement was in the girls' best interests based on his status as their paternal grandfather and his feeling that their placement with him was proper. The court continued the hearing on the petition three times, first to permit appellant's court-appointed counsel to become familiar with the case, second to grant discovery for the prospective adoptive parents to whom the court had granted defacto parent status, and last to enable the Department's counsel who was unavailable to attend.

The court ultimately conducted its hearing on appellant's section 388 petition in April 2002. His attorney made and the court accepted the following offer of proof as to what appellant would testify.

> "That on May 23rd of '01, Ms. Morton in her report that was set for the initial .26 indicated that the paternal grandfather was inappropriate for placement due to a substance abuse history. My client would testify that that is not accurate; that there is no substance abuse history. He does not know where that information came from and it would be false.

"Then on June 8th, the matter was continued. Judge Bush said no more relatives would be considered unless they already put a request for placement. My client would testify he did not put in a request for placement because he was misled to the extent that the Department had indicated that he would not be considered for placement and would be inappropriate; and told the caretakers at that time the Banners would be his father, would be his father-in-law; that there was no need for him to put in a request for placement.

"On June 27th, he did make a written request for placement. He never waived his right to placement and actually was and remains available for placement. It was not until October that he actually got a house, but he was always available to get housing, suitable housing for the Department in order that the children be placed with him.

"My understanding also is that on July 16th there was an ex parte request by minors' counsel regarding a relative placement issue; that request was denied and thereafter my client would simply indicate he was and remains available for relative placement under 361.3."

The parties thereafter submitted the matter and the court denied appellant's petition. The court then moved on to the issue of the girls' permanent planning and, finding them to be adoptable, terminated parental rights.

DISCUSSION

In arguing he was entitled to placement of his granddaughters, appellant raises four points. Having reviewed the record, we reject each of appellant's points as explained below.

One, appellant claims the Department, in its social study before the July 2000 disposition, purportedly misinformed the court that he had a substance abuse history which in turn required any visitation between him and the girls be supervised. However, whether the Department misinformed the court in July 2000 is not a matter within the scope of this appeal from the court's April 2002 denial of his petition to modify. (*In re Sade C., supra,* 13 Cal.4th at p. 994.)

Two, he contends the Department led him to believe that once he found suitable housing, he was entitled to placement. On this point, however, there is no indication in

the record that the Department misled him to his detriment or, more importantly, to the detriment of the children. Moreover, regardless of what appellant claims he was led to believe, he fails to cite any authority for the proposition that under such alleged circumstances the court should have overlooked the requirements of section 388, namely proof that a change in placement was in the children's best interests.

Three, appellant criticizes the court for not hearing his motion when it was first made. In this regard, we hasten to point out that the court first continued the matter after appointing counsel to assist appellant and there is nothing in the record to even suggest appellant ever disputed the propriety of the continuances. Thus, appellant is hardly in any position to criticize the court.

Four, appellant urges, based on the children's contact with him and the rest of the family, that a change in their placement would serve their best interests. We agree the children's best interests are critical when it comes to a court's power to change a prior order. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317.) However, whether a juvenile court should find best interests to modify a previously made order rests within its discretion and its determination may not be disturbed unless there has been a clear abuse of discretion. (*In re Stephanie M., supra,* 7 Cal.4th at p. 318.) The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court. (*Ibid.*)

Having reviewed the record as detailed above, we fail to see how appellant established that a change in placement would advance the girls' best interests. On this point, appellant offered the court no tangible proof, only his grandfather status and his feeling that maintaining the family was utmost. While his familial relationships entitles him to preferential consideration when placement becomes an issue (§ 361.3), there is nothing in the law which requires a court to change the children's placement based solely on a family tie. In addition, the only evidence about appellant's contact with his

granddaughters was that his visitation had been sporadic. Finally, appellant failed to make any showing that the children's need for permanency and stability would be advanced by a new placement order. (*In re Stephanie M., supra,* 7 Cal.4th at p. 317.)

Therefore, we conclude the juvenile court did not abuse its discretion by denying appellant's petition to change placement. (*In re Stephanie M., supra,* 7 Cal.4th at p. 318.)

DISPOSITION

The denial order herein is affirmed.